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| 1 2 3 4 | | | | | |
|--------------------------------|--------|---------------------------------------------------------------|----------|----|----------------------------------------------------------------------------------------------------|
| 2 | | Page 26 additional information in the case, then I may or may | 1 | | Page 2 that you first appeared on the Thomson Reuters list? |
| 3 | | not formulate additional opinions. But as of today | 2 | A | |
| | | what you have is current. | 3 | | Yes, maybe mid to late 2017. |
| | 0 | Other than Wal-Mart's attorneys, did you consult with | 1 | Q | Thank you. What did you understand your engagement |
| 5 | Q | | 4 | _ | to be? |
| | 7. | anyone else about this case? | 5 | A | Boy, that's a hard question. I understood that my |
| | A | No. | 6 | | engagement in this case was to provide objective |
| | Q | At any point in your work in this case, have you | 7 | | information to the counsel for Wal-Mart specifically |
| 8 | | reviewed any of the performance evaluations of Marlo | 8 | | regarding Ms. Spaeth's current cognitive functioning |
| 9 | | Spaeth? | 9 | | as well as her level of cognitive functioning when |
| | A | I don't recall. | 10 | | she was released from Wal-Mart, |
| | Q | And that sounds like you may have, but you can't | 11 | Q | And when you were corresponding with Thomson Reuters, |
| 12 | | certainly say that you did, right? | 12 | | did you have knowledge that Marlo Spaeth is a woman |
| 13 | A | I reviewed a tremendous amount of documents in the | 13 | | who has Down syndrome at that time? |
| 14 | | case, so I can't tell you that I that I did or did | 14 | | MR. BULIOX: Objection as to form. Are you |
| 15 | | not. I don't recall. | 15 | | saying when he was contracting with Thompson Reuters |
| 16 | Q | If Marlo Spaeth had a long history of positive | : 16 | | in the very beginning two years ago, or are you |
| 17 | | performance evaluations, that is something you do not | 17 | | saying in connection with this case? |
| 18 | | have knowledge of; is that correct? | 18 | BY | MS. VANCE: |
| 19 | | MR. BULIOX: I'm sorry, can you repeat the | 19 | Q | In connection with this case. |
| 20 | | question? | 20 | A | I believe so. I believe they contacted me and |
| 21 | | (Previous question read by the reporter.) | 21 | | asked I believe they asked me what my experience |
| 22 | | MR. BULIOX: Okay. I would just object to | 22 | | was with Down syndrome. |
| 23 | | form and to the extent it's been asked and answered | 23 | Q | What is your experience with Down syndrome? |
| 24 | | already, but subject to that you can go ahead and | 24 | A | Well, I have evaluated individuals with Down syndrome |
| 25 | | answer it if you can. | 25 | | and provided clinical treatment services to |
| _ | | Dog 27 | | | |
| 1 | | Page 27 THE WITNESS: I understand from the | 1 | | individuals with Down syndrome. |
| 2 | | material that I reviewed that she was she had a | 2 | Q | I'll focus on your statement that you have evaluated |
| 3 | | long history of pretty good performance. I don't | 3 | ĸ | individuals with Down syndrome. In what capacity |
| 4 | | recall a lot of details of it, but I do recall that | 4 | | have you evaluated individuals with Down syndrome? |
| 5 | | she had a history of positive performance. | 5 | Α | |
| | RY M | S. VANCE: | 6 | Λ | Primarily in a clinical capacity. For many years I |
| | 0 | Have you been retained directly by Wal-Mart in this | 7 | | worked for Michael Reese Hospital in Chicago in what |
| 8 | ¥ | case or by Wal-Mart's law firm or by another entity? | | | was then called the Dysfunctioning Child Center |
| | A | I was retained the way that I got into this case | 8 | | not a very good name. They changed it to the |
| 10 | Λ | | 9 | | Developmental Institute later, thank goodness. |
| 11 | | was through Thomson, T-H-O-M-S-O-N, Reuters, | 10 | | However, I worked at the Developmental |
| 12 | | R-E-U-T-E-R-S. They have a professional referral | 11 | | or the Dysfunctioning Child Center doing evaluations |
| | | service, so they are people that kind of got ahold of | 12 | | of multihandicapped children and adults in |
| 13 14 (| ^ | me on this case. | 13 | | conjunction with the genetics department at the |
| | Q | And Thomson Reuters is a service that maintains lists | 14 | | hospital. So I would evaluate children and young |
| 15 | 70 | of area expert witnesses; is that correct? | 15 | | adults with multiple handicaps including frequently |
| | A | That's my understanding. | 16 | | Down syndrome. |
| | Q | And how long do you believe you have been listed as | 17 | | And then my job as part of the |
| | | an expert available for hire through the service, | 18 | | multidisciplinary team was to represent the hospital |
| 18 | | Thomson Reuters? | 19 | | and our our evaluation results primarily in school |
| 18 19 | Th. | This was the first time that I received a case from | 20 | | hearings related to either Section 504 of the |
| 18 19 20 <i>J</i> | A | | | | |
| 18 19 20 <i>J</i> | | them, so a year or two. | 21 | | Rehabilitation Act or the special education laws for |
| 18 19 20 <i>I</i> 21 | | Are there any other similar services that list you as | 21 22 | | Rehabilitation Act or the special education laws for both the state of Illinois and the federal |
| 18 19 20 <i>I</i> 21 | | - | | | |
| 18 19 20 # 21 22 (| Q A | Are there any other similar services that list you as | 22 | Q | both the state of Illinois and the federal |

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|----------------------------------|--------|-------------------------------------------------------------|----------|-----|---------------------------------------------------------------------------------------------------------|
| 1 | | Page 42 individuals that were seeking either accommodations | 1 | Q | And what is that? |
| 2 | | or for employers that were concerned that | 2 | A | I've been involved in consultation and often |
| 3 | | individuals may need accommodations, so I perform | 3 | | following evaluations with individuals who have |
| 4 | | evaluations and consultation. | 4 | | dementia as part of a treatment team or a |
| 5 | 0 | And what companies have you performed consultations | 5 | | consultation team. I've provided input into |
| 6 | ~ | like that for? | 6 | | treatment programming. |
| 7 | A | They're generally private employers, although I | 7 | Q | And for as a psychologist presumably, correct? |
| 8 | | did if I recall correctly, there was a | 8 | A | Yes. |
| 9 | | municipality in Walworth County that I did some | 9 | 0 | And how many situations would you estimate you've |
| 10 | | consultation and evaluation on. | 10 | ~ | been involved in as a psychologist in treatment for |
| 11 | 0 | On approximately how many cases would you estimate | 11 | | patient with any form of dementia? |
| 12 | ~ | you've served in that capacity? | 12 | А | As a treatment provider or as providing consultation |
| 13 | A | I don't recall exactly, but it's probably five or | 13 | А | |
| 14 | Ω | fewer. | 14 | 0 | and input? Those are two separate questions. |
| 15 | Q | Five or fewer. And to be clear, in none of those | 15 | Q | Right, thank you. So let's separate. Have you ever |
| 16 | × | | 16 | | been the treatment provider for a patient who has an |
| 17 | | situations did the worker in question have Down | | 7 | form of dementia? |
| 18 | 71 | syndrome, correct? | 17 | A | I generally don't treat adults so I'm a child |
| | A | We're talking about consultation to employers, | 18 | | psychologist by training. So it would be very |
| 19 | 0 | correct? | 19 | | unlikely that I would have and I don't recall a |
| 20 | Q | Correct. | 20 | | specific case where I would have been involved in |
| 21 | A | Under ADA? | 21 | | treatment programming, providing direct treatment |
| 22 | Q | The five or fewer that you've testified about. | 22 | | services for a person with dementia. |
| 23 | A | Yes, I don't believe any of those individuals had | 23 | Q | And then the other capacity you indicated where you |
| 24 | | Down syndrome, | 24 | | do have some clinical experience is in the |
| 25 | Q | Do you have any professional or clinical experience | 25 | | consultation? |
| 1 | | Page 43 | | 3 | Page 4 |
| 1 2 | | working with people who have disabilities to set | 1 | A | Yes. |
| | | up I'm sorry. I think your prior testimony you | 2 | Q | How many instances would you estimate you have been |
| 3 | | answered that. I'll withdraw the question. | 3 | | involved clinically as a consultant in the treatment |
| 4 | | Do you have any professional training in | 4 | | of any form of dementia? |
| 5 | 70 | the medical treatment of Alzheimer's? | 5 | A | That's very difficult to say because I don't keep |
| 6 | A | No. | 6 | | track of specific types of cases. But there have |
| 7 | Q | Do you have any professional or clinical experience | 7 | | been many different cases in which I have provided |
| 8 | | in the medical treatment of Alzheimer's? | 8 | | consultation and been involved as part of the |
| 9 | A | I've worked with a number of individuals as part of | 9 | | treatment team for individuals who have had dementia |
| 10 | | evaluation and consultation who have had Alzheimer's | 10 | Q | If you've been involved in the treatment team for a |
| 11 | | or other forms of dementia. I've been involved in | 11 | | client or a patient with dementia you said many |
| 12 | | cases, so I'm not sure if that's the kind of | 12 | | times. Would you say over ten times that |
| 13 | | experience you're looking for or not. | 13 | A | Yes. |
| 14 | Q | No, I'd be looking for the medical management of a | 14 | Q | you've served in that capacity? Have you served |
| 15 | | patient with Alzheimer's. | 15 | | in that capacity over 20 times? |
| 16 | A | Because I'm not a physician, I don't prescribe | 16 | A | Yes. |
| 17 | | medication, so if we are isolating everything medical | 17 | Q | Have you served in that capacity over 50 times? |
| 18 | | management, the answer is going to be no. | 18 | A | I believe so. |
| 19 | Q | Is it also true you do not have any professional | 19 | Q | And is there a typical course of treatment that you |
| | | training in the medical treatment of any form of | 20 | | recommend for a client with dementia? |
| | | dementia? | 21 | A | Not necessarily. Each client is an individual in an |
| 21 | | Correct. | 22 | | of themselves, but typically a treatment program |
| 21 22 | A | | | | |
| 21 22 | A Q | Do you have any clinical experience in the treatment | 23 | | would include medical evaluation and treatment. It |
| 20 21 22 23 24 25 | | | 23 24 | | would include medical evaluation and treatment. It would include psychological evaluation and treatment |

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|----------------|----|--------------------------------------------------------------|------|-----|----------------------------------------------------------|
| 1 | | Page 46 evaluation and services, and it would include family | 1 | 0 | Page 48 Do you know whether any case you did in February |
| 2 | | support services. | 2 | V | was civil or criminal? |
| 3 | 0 | And your role on the team would be with the | 3 | A | |
| 4 | 2 | psychological evaluation and treatment part; is that | | Α | Not without looking. I have that information if |
| 5 | | correct? | 4 | 0 | you'd like me to look. It will just take a sec. |
| 6 | A | Well, it depends on it depends on the setting. So | 5 | Q | Yeah, why don't you let me know if it was civil or |
| 7 | ^ | my role in various treatment settings might be | 6 | | criminal, or if you have the name of the case that |
| 8 | | | 7 | _ | would be the best. |
| 9 | | limited to the psychological portion, but it might | 8 | A | I can do both assuming I can get a connection. |
| 10 | | also be related to the overall provision of services | 9 | Q | Oh, you can't get a connection. |
| 11 | | and the coordination of services among different | 10 | A | I can't? |
| 12 | | professionals. It just depends on the particular | 11 | Q | Not at the EEOC. |
| 1 | 0 | setting that I was in at the time. | 12 | A | You never know, |
| 13 | Q | Would the medical evaluation and treatment portion | 13 | | (Discussion held off the record.) |
| 14 | | or yeah, portion of the teams you're describing be | 14 | | THE WITNESS: You said February actually |
| 15 | 70 | performed by a person with an M.D. degree? | 15 | | let me just look at my Rule 26 list here. |
| 16 | A | An M.D. or a D.O., a licensed physician. | 16 | | (Exhibit 127 marked for identification.) |
| 17 | Q | And to your memory have any of the clients or have | 17 | | THE WITNESS: In February, that was |
| 18 | | any of the cases in which you've been on a team for | 18 | | February 14 or February 26? |
| 19 | | the treatment of a person with some form of dementia | 19 | | MS. VANCE: |
| 20 | | focused on a client who had Down syndrome as well as | 20 | Q | I think 26 was the date I was looking at. |
| 21 | | a form of dementia? | 21 | A | February 26 I was involved in a Daubert hearing, |
| 22 | A | I don't remember a specific case. | 22 | | 18CF242 Ozaukee County criminal case. State v. |
| 23 | Q | I'm going to ask you to review Exhibit 126, your | 23 | | Steiner, S-T-E-I-N-E-R, hyphen VanBuren, capital V |
| 24 | | curriculum vitae, and tell me if there are any | 24 | | A-N, capital B-U-R-E-N. |
| 25 | | updates. | 25 | Q | That was a criminal. What about the February 14? |
| | | Page 47 | | | Page 49 |
| 1 | A | I can answer that now. There are updates. And I | 1 | A | State v. Santiago 17CF2577, Milwaukee County |
| 2 | | brought with me today I think two copies of my | 2 | | criminal, |
| 3 | | current, updated CV that will have the revision date | 3 | Q | Were you court appointed in either of those cases? |
| 4 | | on the bottom of page one of February of 2019. | 4 | A | No, in both of those cases I was retained by the |
| 5 | Q | All right. Is that being copied currently? | 5 | | defense. |
| 6 | A | Yes. | 6 | Q | And were those cases involving child testimony of |
| 7 | Q | So we will exhibit that later. I believe the one | 7 | | victimization of some sort? |
| 8 | | of the reasons we're scheduled for today is because | 8 | A | Those cases were both child forensic interview |
| 9 | | another possible date I asked for was a date you were | 9 | | reviews. |
| 10 | | in court testifying. Is do you know what case | 10 | Q | And the felony allegations against the criminal |
| 11 | | that was on in February? | 11 | | defendant were of felony I don't want to say |
| 12 | A | I have no idea. | 12 | | assault, because it's going to be broader than |
| 13 | Q | But to the best of your knowledge, would that | 13 | | that felonious conduct against the children you |
| 14 | | February case that you testified on be in the updated | 14 | | interviewed? |
| 15 | | curriculum vitae? | 15 | A | Yes. Not the children I interviewed, the children |
| 16 | A | No, that would be on my Rule 26 list. | 16 | | who were the alleged victims. I did not interview |
| 17 | Q | Okay. Which is Exhibit 125? | 17 | | the children. |
| 18 | A | Yes, although note that the Rule 26 list that you | 18 | Q | Thank you. All right. Now, I'd like to direct your |
| 19 | | have is dated December 14 of 2018 and it's now the | 19 | | attention to an exhibit we just had marked as Exhibit |
| 20 | | end of March, so that's updated on a regular basis. | 20 | | 127. |
| 0.7 | Q | All right. So I guess I would ask for the most | 21 | | When I look at the last sentence going to |
| 21 | | | 22 | | the second page, I see that when you evaluated Marlo |
| 22 | | recent, because I have reason to believe you were in | | | |
| 22 23 | | court in February, because I wanted to depose you a | 23 | | Spaeth on June 1, 2018, you conducted a |
| 22 23 24 | A | - | | | |

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|----------------------------------------------|---|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------|------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1 | | Page 98 that in part because patients with can have | 1 | | Page 100 documentation from Dr. Kaminsky. |
| 2 | | very high scores and perfect scores in some cases on | 2 | 0 | - |
| 3 | | this | 3 | A | Nurse practitioner Kaminsky? I'm sorry, APNP. |
| 4 | A | That's not the reason I put that in there. I put | 4 | 0 | ** |
| 5 | | that in there because she had when I did this, she | 5 | × | And I want to say it's Annette. Does that sound right to you? |
| 6 | | had a diagnosis of | 6 | А | It could be. |
| 7 | 0 | From where? | 7 | 0 | |
| 8 | A | From her medical records from the APMP, Ms. Kaminsky. | 8 | V | And it sounds to me like you had no conversation with Ms. Kaminsky at any point, correct? |
| وا | 0 | That was was the diagnosis. | 9 | A | You are correct. |
| 10 | A | It actually said in the records that I | 10 | 0 | You had no conversation with Ms. Stevenson, the |
| 11 | | reviewed. So I'm looking at a person in front of me | 11 | Q | sister of Marlo Spaeth, at any point concerning that |
| 12 | | who has a diagnosis of although I do I | 12 | | evaluation, clinical evaluation, correct? |
| 13 | | will tell you that Dr. Smith disputed that of course, | 13 | A | The only conversations I had with Amy Jo Stevenson |
| 14 | | so that was one of the things I was looking at. | 14 | 62 | were conducted in June when I met with her. And I'm |
| 15 | | And as you know, in my report I believe I | 15 | | looking at my notes which are Bates stamped D001110 |
| 16 | | said that Ms that she had | 16 | | and subsequent. |
| 17 | | So I'm | 17 | Q | In which exhibit, please? |
| 18 | | seeing signs of here as well. So what I | 18 | A | 128. These are my handwritten notes at the time that |
| 19 | | needed to know then was her performance on the | 19 | | I met with Ms. Spaeth. And as you recall, I met with |
| 20 | | simply a performance of she's getting a | 20 | | Amy Jo during the beginning of that to get some |
| 21 | | little lower score because of or are there | 21 | | background information. And I asked about history, |
| 22 | | other factors in play. | 22 | | and I'm just looking at my notes to see if she |
| 23 | | In this particular case I felt that her | 23 | | mentioned the diagnosis or the medication |
| 24 | | scores were lower than I would expect even given the | 24 | | that she had taken. And the answer is no, she did |
| 25 | | diagnosis of That's why I put that in | 25 | | not mention her history of taking medication or |
| | | | | | not more real mesons of taking medication of |
| 1 | | Page 99 there. | 1 | | Page 101 difficulties or her discussion with Nurse |
| 2 | Q | Because as the test manual indicates, people with | 2 | | Practitioner Kaminsky about it. |
| 3 | | can still have perfect scores? | 3 | Q | All right. And if you found out that Ms. Spaeth was |
| 4 | Α | I'm not sure if the test manual said they can have | 4 | | evaluated with a test but had higher scores than |
| 5 | | perfect scores. There's probably some perfect scores | 5 | | the scores she had with you, would that in any way |
| 6 | | in there. | 6 | | affect your opinion? |
| 7 | Q | 50 is a perfect score, right? | 7 | A | Well, it might. I would like to in that case I |
| 8 | A | Yeah, 50 is a perfect score. But generally people | в | | would want to see the scores and see copies of |
| 9 | | with will score a little bit lower on the | 9 | | the information that is part of that test record, and |
| 10 | | than people without | 10 | | I would want to compare them and see you know, see |
| 11 | Q | And then I want to direct your attention to the | 11 | | what the differences or the similarities were. |
| 12 | | reliance you place on the review of Ms. Kaminsky's | 12 | Q | And if she had a score that was lower, would that |
| 13 | | medical records. If we look at Bates stamp D002049, | 13 | | affect your opinion? |
| | | on the fourth full paragraph you write, In the | 14 | A | It might depend on how much lower it was and what |
| 14 | | | | | |
| 14 15 | | current case I have limited information concerning | 15 | | areas it was lower. |
| | | current case I have limited information concerning Ms. Spaeth's functioning in July 2012. The | 15 16 | Q | areas it was lower. |
| 15 | | current case I have limited information concerning | | Q | areas it was lower. If the clinical evaluation consisted of a five-minute |
| 15 16 | | current case I have limited information concerning Ms. Spaeth's functioning in July 2012. The | 16 | Q | areas it was lower. If the clinical evaluation consisted of a five-minute phone call between Ms. Stevenson and Ms. Kaminsky |
| 15 16 17 | | current case I have limited information concerning Ms. Spaeth's functioning in July 2012. The information that I have, however, indicates that an unidentified clinician evaluated her and determined that she was experiencing | 16 17 | Q | areas it was lower. If the clinical evaluation consisted of a five-minute |
| 15 16 17 18 | | current case I have limited information concerning Ms. Spaeth's functioning in July 2012. The information that I have, however, indicates that an unidentified clinician evaluated her and determined that she was experiencing Details of that evaluation were not available to me. | 16 17 18 | Q | areas it was lower. If the clinical evaluation consisted of a five-minute phone call between Ms. Stevenson and Ms. Kaminsky with reports of would that affect your opinion in this case? |
| 15 16 17 18 19 | A | current case I have limited information concerning Ms. Spaeth's functioning in July 2012. The information that I have, however, indicates that an unidentified clinician evaluated her and determined that she was experiencing | 16 17 18 19 | Q | areas it was lower. If the clinical evaluation consisted of a five-minute phone call between Ms. Stevenson and Ms. Kaminsky with reports of would that affect your opinion in this case? MR. BULIOX: Objection, form, calls for |
| 15 16 17 18 19 20 | A | current case I have limited information concerning Ms. Spaeth's functioning in July 2012. The information that I have, however, indicates that an unidentified clinician evaluated her and determined that she was experiencing Details of that evaluation were not available to me. | 16 17 18 19 20 | Q | areas it was lower. If the clinical evaluation consisted of a five-minute phone call between Ms. Stevenson and Ms. Kaminsky with reports of would that affect your opinion in this case? |
| 15 16 17 18 19 20 21 | A | current case I have limited information concerning Ms. Spaeth's functioning in July 2012. The information that I have, however, indicates that an unidentified clinician evaluated her and determined that she was experiencing Details of that evaluation were not available to me. Oh, July 2015 is what I should have said. I think I | 16 17 18 19 20 21 | Q | areas it was lower. If the clinical evaluation consisted of a five-minute phone call between Ms. Stevenson and Ms. Kaminsky with reports of would that affect your opinion in this case? MR. BULIOX: Objection, form, calls for speculation. Subject to that if you can answer, go ahead. |
| 15 16 17 18 19 20 21 22 | | current case I have limited information concerning Ms. Spaeth's functioning in July 2012. The information that I have, however, indicates that an unidentified clinician evaluated her and determined that she was experiencing Details of that evaluation were not available to me. Oh, July 2015 is what I should have said. I think I misspoke there. | 16 17 18 19 20 21 | Q | areas it was lower. If the clinical evaluation consisted of a five-minute phone call between Ms. Stevenson and Ms. Kaminsky with reports of would that affect your opinion in this case? MR. BULIOX: Objection, form, calls for speculation. Subject to that if you can answer, go |

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| 1 | | Page 106 it falls within about the first percentile. | 1 | | Page 108 magnitude. |
| 2 | | So there's a huge difference when you if | 2 | Q | And for the , do depression symptoms affect |
| 3 | | she was not experiencing in this case attention | 3 | ĸ | people's performance? |
| 4 | | problems, you would expect that percentile range to | 4 | A | They could potentially, yes. |
| 5 | | be around 50, and instead it's around one so and | 5 | 0 | And you write that Dr. Smith opined that the |
| 6 | | that's compared to the normative sample, the age | 6 | _ | I'm on 2049, last paragraph. Dr. Smith |
| 7 | | group that Dr. Smith references that she would be | 7 | | opined that the that was earlier diagnosed |
| 8 | | more of a valid comparison. | 8 | | for Ms. Spaeth may have been that |
| 9 | | So what I'm saying with this Appendix C is | 9 | | results from anxiety and depression. While that is |
| 10 | | essentially it doesn't matter if you consider that | 10 | | clearly a possibility, it is not consistent with the |
| 11 | | she may be aging at a rate significantly faster than | 11 | | data available to me, |
| 12 | | a person in the normal population, she still is very | 12 | | And I wanted to ask you why do you write |
| 13 | | consistent with individuals with | 13 | | that that is clearly a possibility? |
| 14 | | not consistent with persons of that older | 14 | A | Well, because we know that a person that is |
| 15 | | chronological age. | 15 | | experiencing severe anxiety or depression could also |
| 16 | Q | Are her scores consistent with being a person who has | 16 | | then have problems with memory and attention and |
| 17 | | Down syndrome who does not have | 17 | | motivation. Those symptoms can co-occur. |
| 18 | A | Her scores are not consistent with being a person | 18 | Q | And do you think it's possible that the depressive |
| 19 | | that does not have Regardless of whether | 19 | | symptoms for a person with Down syndrome that do |
| 20 | | she has Down syndrome or not, her scores are not | 20 | | manifest well, strike that. |
| 21 | | consistent with a person who doesn't have | 21 | | I'll withdraw the question. |
| 22 | Q | So is to your knowledge is there research about | 22 | | Turning to 2050 on the next page, you noted |
| 23 | | how a person who hasbut I'm sorry, who | 23 | | that Ms. Spaeth's scores on the |
| 24 | | has Down syndrome but does not have would | 24 | | over the six-month period between your administration |
| 25 | | typically score on the | 25 | | of the two tests, right? |
| | | Page 107 | | | Page 109 |
| | A | I don't believe there's been any research that has | 1 | Α | I'm looking for what paragraph you're on. |
| 2 | | 7 1 7 | | | |
| | | looked at that. | 2 | Q | The first full paragraph. |
| 3 | Q | So what is your basis for saying that she I mean | 2 | Q A | The first full paragraph. Yes, I see that. Yes. |
| 3 4 | Q | So what is your basis for saying that she I mean are you saying that she couldn't have gotten these | 2 3 4 | Q | The first full paragraph. Yes, I see that. Yes. She was now, was her score overall higher the |
| 3 4 5 | Q | So what is your basis for saying that she I mean are you saying that she couldn't have gotten these scores on the just because she | 2 3 4 5 | Q A | The first full paragraph. Yes, I see that. Yes. She was now, was her score overall higher the second time it was given? Looks like there was a |
| 3 4 5 6 | Q | So what is your basis for saying that she I mean are you saying that she couldn't have gotten these scores on the just because she has Down syndrome without | 2 3 4 5 6 | Q A | The first full paragraph. Yes, I see that. Yes. She was now, was her score overall higher the second time it was given? Looks like there was a total score of in June but then a total score |
| 3 4 5 6 7 | Q | So what is your basis for saying that she I mean are you saying that she couldn't have gotten these scores on the just because she has Down syndrome without MR. BULIOX: I'm going to object to form, | 2 3 4 5 6 7 | Q A Q | The first full paragraph. Yes, I see that. Yes. She was now, was her score overall higher the second time it was given? Looks like there was a total score of in June but then a total score of total raw score of in December. |
| 3 4 5 6 7 8 | Q | So what is your basis for saying that she I mean are you saying that she couldn't have gotten these scores on the just because she has Down syndrome without MR. BULIOX: I'm going to object to form, but subject to that, if you understand the question, | 2 3 4 5 6 7 8 | Q A Q | The first full paragraph. Yes, I see that. Yes. She was now, was her score overall higher the second time it was given? Looks like there was a total score of in June but then a total score of total raw score of in December. You're correct. |
| 3 4 5 6 7 8 9 | Q | So what is your basis for saying that she I mean are you saying that she couldn't have gotten these scores on the just because she has Down syndrome without MR. BULIOX: I'm going to object to form, but subject to that, if you understand the question, answer. | 2 3 4 5 6 7 8 | Q A Q | The first full paragraph. Yes, I see that. Yes. She was now, was her score overall higher the second time it was given? Looks like there was a total score of in June but then a total score of total raw score of in December. You're correct. The second time she took it there was some |
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| back and look for more subjective data. The concept of being scheduled, the passive concept of she has been scheduled, can you expect Marlo Spaeth as the person who tested as she did with you being scheduled? A Yes. Which we don't have it. I see the sentence, Continued infractions will result in the next level of coaching up to and including termination. Do you think continued infraction is within the vocabulary that Marlo Spaeth demonstrated to you in June of 2018 to you? I also see 'The expiration date of the coaching may be extended beyond December 23, 2015, date if the associate spent time on LOA. I at idon't know for sure, but I don't think so. What about the concept of a lack of customer service. Is that within the reading comprehension that Marlo Spaeth displayed to you in June of 2018? I didn't have it. Volunt about infractions will result in the next level of coaching up to and including termination. Do you think continued infraction is within the vocabulary that Marlo Spaeth demonstrated to you in June of 2018? The term probably is not. I also see 'The expiration date of the coaching may be extended beyond December 23, 2015, date if the associate spent time on LOA. I also see 'The expiration date of the coaching may be extended beyond December 23, 2015, date if the associate spent time on LOA. I didn't have for sure, but I don't think so. I don't know for sure, but I don't think so. I also see 'The expiration date of the coaching may be extended beyond December 23, 2015, date if the associate spent time on LOA. And is that becase there are difficult vocabulary words or difficult concepts in that sentence? Mny does it require an explanation. And is that becase there are difficult vocabulary words or difficult concepts in the sentence? Mny does it require an explanation? Well, those are big words, and Marlo is a simple person. So for example, on the back of this exhibit, you'll notice under action plan, 'I will check my schedule every day.' That's much more straightforward than the e | | | nigiliy C | OHH | uen | uai |
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| the others are a little more difficult for her. The concept of being scheduled, the passive concept of some the person who tested as ahe did with you have a little more delication, and you expect harlo being scheduled? The concept of being scheduled, the passive concept of speak has the person who tested as ahe did with you held you have a little more delication in the person who tested as ahe did with you have a held in the person who tested as ahe did with you have a held in the person who tested as a held with you have a held in the reading comprehending a little. It is that within the reading comprehending has a little work that is expected to work her scheduled a shift. It is that within the reading comprehending has been delicated to you in June of 2018? A I don't know for sure, but I don't think so. Speath displayed to you in June of 2018? A I don't know for sure, but I don't think so. Speath displayed to you in June of 2018? A I don't know for sure, but I don't think so. Speath displayed to you in June of 2018? A I don't know for sure, but I don't think so you have any knowledge of whether a person sure of 2018. A I don't know for sure, but I don't think so. Speath displayed to you in June of 2018? A I don't know for sure, but I don't think so you have any knowledge of whether a person sure of 2018. A not the ext that, but those would be words that I in think reason whether a person sure of 2018. A not the ext that, but those wait be words that I in think reason whether a person sure of 2018. A not complete the consent of 2018. A not consent in the seating to object to the substition of the consent of 2018. A not consent in the seating the person sure of 2018. A not consent in the seating the person sure of 2018. A not consent in the seating the person sure of 2018. A not consent in the seating the person sure of 2018. A not consent in the seating the person sure of 2018. A not consent in the seating the person sure of 2018. A not consent in the seating the person sure of 2018. A | 1 | А | | | | Page 160 |
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| would have been earlier, but I don't have objective I don't know of a study that's looked at that specifically. BY MS. VANCE: Q So if somebody tested with a second grade reading level after they had you have no knowledge of whether or not they may have had a higher than or not we should expect that in the data? A The test data that I had would not answer that other abilities. So for example, in 2015 was she capable of reading a bus schedule, was she capable of making a grocery list and following written instructions at a 10 let's get this sentence, She did not come to I'm sorry 'She did not come in to work, nor did she call in, so this is considered by policy to be a no-call/no-show absence occurrence'. MR. BULIOX: I'm sorry, where were you? THE WITNESS: Right there. BY MS. VANCE: 17 Q Is the word would you expect the word 'occurrence' to be within Marlo Spaeth's vocabulary based on your testing? Q Would you expect the idea of her actions being comprehension based on your testing? Comprehension based on your testing? | 9 | | performance in 2018 would be worse than her abilities | 9 | Q | Sorry, I turned the page like you did. Sorry. So |
| objective I don't know of a study that's looked at that specifically. 12 | 10 | | would have been earlier, but I don't have | 10 | | |
| that specifically. 12 call in, so this is considered by policy to be a 13 BY MS. VANCE: 14 Q So if somebody tested with a second grade reading 15 level after they had you have no knowledge 16 of whether or not they may have had a higher than 17 second grade reading level prior to whether 18 or not we should expect that in the data? 19 A The test data that I had would not answer that 20 question. You would have to go back and look at 21 other abilities. So for example, in 2015 was she 22 capable of reading a bus schedule, was she capable of 23 making a grocery list and following it, was she 24 capable of following written instructions at a 12 call in, so this is considered by policy to be a 13 no-call/no-show absence occurrence'. 14 MR. BULIOX: I'm sorry, where were you? 15 EY MS. VANCE: 17 Q Is the word would you expect the word 'occurrence' to be within Marlo Spaeth's vocabulary based on your testing? 20 A No. 21 O Would you expect the idea of her actions being considered by policy something within her reading comprehension based on your testing? 22 capable of following written instructions at a 23 No. | 11 | | objective I don't know of a study that's looked at | 11 | | |
| 13 BY MS. VANCE: 14 Q So if somebody tested with a second grade reading 15 level after they had you have no knowledge 16 of whether or not they may have had a higher than 17 second grade reading level prior to whether 18 or not we should expect that in the data? 19 A The test data that I had would not answer that 19 question. You would have to go back and look at 20 other abilities. So for example, in 2015 was she 21 capable of reading a bus schedule, was she capable of 22 making a grocery list and following it, was she 23 capable of following written instructions at a 24 A No. | 12 | | that specifically. | 12 | | |
| 14 Q So if somebody tested with a second grade reading 15 level after they had you have no knowledge 16 of whether or not they may have had a higher than 17 second grade reading level prior to whether or not we should expect that in the data? 18 or not we should expect that in the data? 19 A The test data that I had would not answer that 19 question. You would have to go back and look at 20 other abilities. So for example, in 2015 was she 21 capable of reading a bus schedule, was she capable of 22 making a grocery list and following it, was she 23 capable of following written instructions at a 24 A No. | 13 | BY M | | | | |
| level after they had you have no knowledge of whether or not they may have had a higher than second grade reading level prior to whether or not we should expect that in the data? 18 to be within Marlo Spaeth's vocabulary based on your testing? 19 A The test data that I had would not answer that 19 testing? 20 question. You would have to go back and look at 20 A No. 21 other abilities. So for example, in 2015 was she 21 Q Would you expect the idea of her actions being 22 capable of reading a bus schedule, was she capable of 23 making a grocery list and following it, was she 24 capable of following written instructions at a 24 A No. | 14 | Q | So if somebody tested with a second grade reading | | | |
| of whether or not they may have had a higher than second grade reading level prior to whether or not we should expect that in the data? The test data that I had would not answer that question. You would have to go back and look at other abilities. So for example, in 2015 was she capable of reading a bus schedule, was she capable of making a grocery list and following it, was she capable of following written instructions at a 16 BY MS. VANCE: 17 Q Is the word would you expect the word 'occurrence' to be within Marlo Spaeth's vocabulary based on your testing? 18 to be within Marlo Spaeth's vocabulary based on your testing? 20 A No. 21 Q Would you expect the idea of her actions being considered by policy something within her reading comprehension based on your testing? 22 capable of following written instructions at a 23 No. | 15 | | | | | |
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| or not we should expect that in the data? 18 to be within Marlo Spaeth's vocabulary based on your testing? 19 A The test data that I had would not answer that 19 testing? 20 question. You would have to go back and look at 21 other abilities. So for example, in 2015 was she 22 capable of reading a bus schedule, was she capable of 23 making a grocery list and following it, was she 24 capable of following written instructions at a 25 to be within Marlo Spaeth's vocabulary based on your testing? 26 Would you expect the idea of her actions being considered by policy something within her reading comprehension based on your testing? | 17 | | A | | | |
| 19 A The test data that I had would not answer that 20 question. You would have to go back and look at 21 other abilities. So for example, in 2015 was she 22 capable of reading a bus schedule, was she capable of 23 making a grocery list and following it, was she 24 capable of following written instructions at a 29 testing? 20 A No. 21 Q Would you expect the idea of her actions being 22 considered by policy something within her reading 23 comprehension based on your testing? 24 A No. | 18 | | 2 1 | | ~ | |
| question. You would have to go back and look at other abilities. So for example, in 2015 was she capable of reading a bus schedule, was she capable of making a grocery list and following it, was she capable of capable of following written instructions at a 24 A No. | 19 | A | | | | |
| other abilities. So for example, in 2015 was she capable of reading a bus schedule, was she capable of making a grocery list and following it, was she capable of following written instructions at a 21 Q Would you expect the idea of her actions being considered by policy something within her reading comprehension based on your testing? A No. | | | | | А | - |
| capable of reading a bus schedule, was she capable of 22 considered by policy something within her reading making a grocery list and following it, was she 23 comprehension based on your testing? capable of following written instructions at a 24 A No. | 1 | | | | | |
| making a grocery list and following it, was she 23 comprehension based on your testing? capable of following written instructions at a 24 A No. | | | | | к | |
| 24 capable of following written instructions at a 24 A No. | | | | | | - |
| | | | | | А | - 1 |
| 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 | | | | | _ | |
| | 20 | | | | mC. | |

| | | Inginy Co | OHH | acii | lai |
|----------|---|------------------------------------------------------------|-----|------|-------------------------------------------------------|
| 1 | | Page 162 think that's within the reading comprehension she | 1 | A | Yes. Page 164 |
| 2 | | displayed in your testing? | 2 | 0 | And that was in your testing, right? |
| 3 | A | Probably not. | 3 | A | Yes. |
| 4 | 0 | What about an 'unsatisfactory shopping experience for | 4 | 0 | And you also testified that at some point in time she |
| 5 | | the customer.' Would you expect Marlo Spaeth to have | 5 | ж. | developed is that correct? |
| 6 | | reading comprehension about an unsatisfactory | 6 | A | Yes. |
| 7 | | shopping experience for the customer? | 7 | Q | And how does that work, does it get worse over time? |
| 8 | A | I think she would have difficulty reading that. | 8 | A | typically gets worse over time unless one |
| 9 | Q | What about translating the concept that something | 9 | •• | takes medication to help slow down the progression. |
| 10 | | that leads to an unsatisfactory shopping experience | 10 | 0 | So one's ability to function declines over time; is |
| 11 | | for the customer may result in potential lost sales. | 11 | ~ | that a fair assessment? |
| 12 | | Would you expect her to follow the logic of that | 12 | A | Yes. |
| 13 | | phrase? | 13 | 0 | And is it fair to say that she would have been higher |
| 14 | A | Not if you presented it to her just like that. I | 14 | - | functioning when it came to her ability to adapt to |
| 15 | | think you'd need to explain it to her. | 15 | | change back in 2014, 2015? |
| 16 | Q | You wouldn't expect her to be able to read that | 16 | A | I believe so, |
| 17 | | sentence and comprehend it; is that right? | 17 | Q | You indicated I think, and correct me if I'm wrong, |
| 18 | Α | Not based on my testing. | 18 | ~ | earlier in your testimony that you did not speak to |
| 19 | | MR. BULIOX: Again, to be clear, we're | 19 | | Amy Jo or the nurse practitioner to form an opinion |
| 20 | | talking about Dr. Thompson's testing as it related to | 20 | | regarding the possibility of Ms. Spaeth possibly |
| 21 | | his assessments in 2018, we're not talking about 2015 | 21 | | having is that right? |
| 22 | | or 2014. If we are talking about 2014, 2015, I would | 22 | A | Correct. |
| 23 | | object to the form of the question as being vague and | 23 | Q | Why not? |
| 24 | | ambiguous. | 24 | A | Well, I had I was testing for that. I knew that |
| 25 | | MS. VANCE: I think the record's clear. | 25 | | there was documentation that she was having |
| | | Page 163 | | | Page 165 |
| 1 | Q | Am I right that you testified that typically you | 1 | | , and the documentation included a diagnosis |
| 2 | | expect an IQ score to remain stable after age 10? | 2 | | of and so I was aware that that was an |
| 3 | A | 10 to 12. | 3 | | issue. So I was going to conduct standardized |
| 4 | Q | After age 10 to 12 throughout life, correct? | 4 | | testing to look at that possibility. |
| 5 | A | Barring some additional insult or disease that | 5 | | I could have talked with Amy Jo, but that |
| 6 | | affects it. | 6 | | would have required, first of all, additional time |
| 7 | Q | The achievement testing however, does an adult's | 7 | | that I didn't have during the assessment. I was |
| В | | achievement top out at a certain age and then become | 8 | | limited to two two-hour blocks. It would also it |
| 9 | | stable? | 9 | | would have been Amy's subjective impressions in the |
| 10 | A | No. Hopefully we're life-long learners. I'm sure | 10 | | middle of litigation, which would have been perhaps |
| 11 | | all of us in this room are. | 11 | | suspect because she had potential motivation to push |
| 12 | | MS. VANCE: I have no further questions at | 12 | | me in one direction. And I didn't need to talk to |
| 13 | | this time. It's 5:10. | 13 | | the Ms. Kaminsky, Nurse Kaminsky, because she had |
| 14 | | MR. BULIOX: Can we take a short break? | 14 | | already documented things in her record. |
| 15 | | MS. VANCE: Yes. | 15 | Q | You did in fact speak to Amy Jo at some point, right? |
| 16 | | (Recess taken from 5:11 to 5:17 p.m.) | 16 | A | Yes, I did. |
| 17 | | EXAMINATION | 17 | Q | That was during your assessment in June of 2018? |
| 18 | | MR. BULIOX: | 18 | A | Yes. |
| 19 | Q | Dr. Thompson, you talked about Marlo's ability to | 19 | Q | At one point in time you were asked about opinion 4A |
| 20 | | adapt to change in your final assessment; is that | 20 | | in your report which I believe was Exhibit 130. And |
| 21 | | right? | 21 | | if you look at the bottom, if you look at page 10 of |
| 22 23 | A | Yes. | 22 | | 18 |
| 14 | Q | And you testified that she showed signs of having | 23 | A | Yes. |
| | | flexibility in connection with her routine. Did I | 24 | 0 | this is what I'm referring to see 43 |
| 24 25 | | hear that right? | 25 | V | this is what I'm referring to, so 4A, you see that? |

| - | | Highly Co | | uem | idi |
|----------|--------|------------------------------------------------------------------------------------------------------|----------|---------|-------------------------------------------------------------------------------------------------------------|
| 1 | A | Page 166 4A, yes. | 1 | | Page 168 schedule every day? |
| 2 | 0 | And you talked about external influences earlier | 2 | A | Yes. |
| 3 | ¥ | today; is that right? | 3 | 0 | If Marlo is the one that made this comment, what is |
| 4 | А | Yes. | 4 | × | your takeaway, if any, from that? |
| 5 | 0 | And you talked about at the onset of the individual | 5 | А | I would believe that she understood she needed to |
| 6 | × | portion of the June evaluation Ms. Spaeth | 6 | Λ | check her schedule on a daily basis and then follow |
| 7 | | spontaneously brought up her separation from | 7 | | the schedule. |
| 8 | | employment at Wal-Mart, correct? | 8 | 0 | We've spent some time going over Dr. Smith's updated |
| 9 | A | Correct. | 9 | Q | report. What do you think about his report? |
| 10 | 0 | Could the external influence have been coaching or | 10 | A | I think that his report certainly raises questions |
| 11 | V | direction she received from Amy Jo or somebody else? | 11 | А | about the presence of confirmatory bias. |
| 12 | A | Certainly. | 12 | 0 | And what's confirmatory bias? |
| 13 | 0 | Did her mention of her separation with employment | 13 | A | - |
| 14 | Q | have anything to do with any question you asked her? | 14 | А | Situation where a person goes into a situation with a preconceived notion and then pays attention or gives |
| | 7\ | | | | |
| 15 16 | A | No, it did not. | 15 | | increased credibility to things that will support |
| 17 | Q | There was discussion earlier today about Amy Jo and | 16 | | their preconceived notion and pays less attention to |
| l | | what her motivations were in connection with a report | 17 | | or discounts the importance of information that might |
| 18 19 | T. | that she gave to Dr. Smith. Do you recall that? Yes. | 18 | | refute their preconceived notion. |
| l | A | | 19 | | MR. BULIOX: That's all I have. |
| 20 | Q | And I think you had mentioned at one point that one | 20 | T) 17 A | EXAMINATION |
| 21 | | of her motivations could have possibly been | 21 | | AS. VANCE: |
| 22 | | fabricating a report? | 22 | Q | I do have some quick follow-up regarding this topic. |
| 23 | A | That's one possibility, yes. | 23 | | You've testified about on redirect of Amy |
| 24 25 | Q | What if there was a period where Amy Jo represented that she was Marlo's guardian and she wasn't her | 24 25 | | Jo Stevenson as an external factor including Marlo Spaeth and noting that Amy Jo, because the case is in |
| - | | | | | |
| 1 | | Page 167 guardian, but she represented that she was her | 1 | | Page 169 the middle of litigation, may have bias or motives. |
| 2 | | guardian as part of her efforts to advance this case | 2 | | I wanted to ask you in your clinical |
| 3 | | or claims against Wal-Mart, Would that be suggestive | 3 | | experience have you ever run across special needs |
| 4 | | of any effort to you to fabricate for the sake of | 4 | | trusts? |
| 5 | | advancing the claims or issues against Wal-Mart? | 5 | | MR. BULIOX: Objection, form, undefined as |
| 6 | A | It would certainly make me concerned about that, yes. | 6 | | to what special needs trust is. Subject to that you |
| 7 | 0 | I'm going to show you again Exhibit 20 if you can | 7 | | can answer if you know. |
| 8 | ~ | pull that out. | 8 | DV N | IS. VANCE: |
| 9 | | MS. VANCE: It's an exhibit previously | 9 | 0 | |
| 10 | | marked as Stern dep 20. | 10 | A | Do you know what a special needs trust is? |
| 11 | DV v | MR. BULICX: | 11 | А | I believe I know, but I'm not sure. It sounds like |
| 12 | Q | Okay, you were asked not too long ago about whether | 12 | 0 | a more of a legal concept. Well, it's a financial concept. |
| 13 | ¥ | or not Marlo could comprehend from a reading | 13 | Q A | To me it's the same thing. |
| 14 | | - | | 0 | _ |
| 15 | | comprehension standpoint several items in this | 14 | Q | Have you ever had clients who have you ever been |
| l | 'n | exhibit, correct? | 15 | | paid out of a special needs trust for treating |
| 16 | A | Correct. | 16 | 70 | clients to your knowledge? |
| 17 | Q | All right. Do you believe based on your assessment | 17 | A | For treating clients, I honestly don't know about |
| 18 | | of Marlo in 2018 that if this was explained to her, | 18 | | treating certainly for evaluating, but I'm not |
| 19 | | that she would be able to understand the concepts in | 19 | 0 | sure about treating. |
| 20 | 7 | this document? | 20 | Q | So you received payment from a special needs trust |
| 21 | A | If it was explained to her, yes. | 21 | | for performing an evaluation of a client? |
| 22 | Q | And if you turn to I believe it's the second page. | 22 | A | Yes. |
| 23 | _ | So at the bottom it says EEOC00460. Do you see that? | 23 | Q | And are you aware that trusts have trustees? |
| ۵. | | Ves | 24 | Α | Yes, |
| 24 25 | A 0 | Yes. Under action plan it says, quote, I will check my | 25 | Q | And is your thinking about Amy Jo Stevenson's motives |

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